

EXHIBIT A

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3-28-13

FILED

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State Bar No. 021560
P.C.C. No. 65851

13 MAR 28 PM 7:10

CLERK OF THE COURT

LAURA TENENHOLZ

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

No.

C20131683

MICHAEL MCHUGH,
Plaintiff,

COMPLAINT

(Non-Motor Vehicle Tort)

v.

**PIMA COUNTY, ARIZONA; PIMA
COUNTY SHERIFF'S DEPARTMENT;
SHERIFF CLARENCE DUPNIK;
MARSHA FOWLER, RN; ANDREA
BERRIOS, MA; KATHY RICHEY, RN;
GWEN LEMKE, MA; RAMON TAPIA,
MA; ROMONA YUBETA, RN; JOHN
REAM, RN; ELLINOR PROCTOR, RN;
KEVIN CONDON, RN; CATHY
KOHLE, RN; ELISA L. NAVARRO
PCSD#5594; ALONZO VILLA JR. PCSD
#5766; ROBERT K. CHATFIELD PCSD
#6250; JARROD W. NIELSON PCSD
#4678; FRANCISCO B. VASQUEZ
PCSD#3395; MICHELLE L.
MITCHELL PCSD#7124; ARMANDO**

Charles Harrington

PAID

1 ENCINAS PCSD #4498; STEVEN R.
2 STREET PCSD#2293; GUADALUPE V.
3 BORBOA PCSD #4565; SHARON The Honorable _____
4 ESPINOZA PCSD#6437 ;GERALD D.
5 AUSTIN PCSD #6512;IAN R.
6 BURRUATO PCSD #7105;TODD T.
7 MATTAS PCSD #3523;ROBERT L.
8 PHILLIPS PCSD#3766;CARY W. TEAL
9 PCSD #7133; CITY OF TUCSON;
10 TUCSON POLICE DEPARTMENT;
11 TPD CHIEF ROBERTO VILLASENOR;
12 OFC. ELKINS TPD#52777; OFC.
13 KACZINSKI TPD#32266; OFC.
14 HUMPHRIES TPD#40358; OFC.KIDD
15 TPD#52933; OFC. GALVAN TPD#
16 43045; OFC. DICKINSON TPD#42393;
17 OFC. HEARN TPD#50454; OFC.
18 OLIVES TPD#45662; OFC.
19 ATCHINSON TPD# 35638; OFC.
20 HAYNES TPD#41537; OFC.VAN
21 NORMAN TPD# 31575; ALL SPOUSES
22 THEREOF; CONMED HEALTHCARE
23 MANAGEMENT, AND OWNER AND
24 OPERATOR THEREOF; JOHN &
25 JANE DOES, 1-50,

26
27 Defendants.
28

1 COMES NOW the Plaintiff Michael McHugh, for his cause of action, and on information
2 and belief, hereby alleges that the listed defendants were negligent and/or reckless and/or
3 malicious and/or acted with extreme and/or unreasonable disregard for his health, safety,
4 happiness, welfare and constitutional rights when he was in the custody Pima County
5 Sheriff's Deputies and Corrections Officers and other staff at the Pima County Adult
6 Detention Center, who caused medical issues including severe dehydration and resulting
7 liver and kidney damage and other serious physical impairments, and prevented access to
8 medical care and/or failed to provide medical care which they had a duty to provide, and
9 also assaulted the Plaintiff and otherwise subjected him to severe emotional distress,
10 physical pain, suffering, harm and risk of harm, humiliation, to be delineated specifically
11 as follows:
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14

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16 **JURISDICTION AND VENUE**

- 17 1. Plaintiff files this action under tort and negligence theories.
18
19 2. All of the material acts and events alleged herein occurred in Pima County, State of
20 Arizona;
21
22 3. All relevant times, the defendants named herein were employed or contracted by Pima
23 County, State of Arizona and were acting in their capacity as employees and/or agents
24 (including contractors) for Pima County and for the Pima County Sheriff's Department,
25 tasked with serving, supporting and enhancing the mission and/or executing some or all
26 responsibilities of the foregoing entities;
27
28

1 4. At all relevant times, the Plaintiff was a resident of Pima County, State of Arizona.

2
3 5. Pima County/Sheriff Dupnik is responsible via *respondeat superior*, derivative

4 liability, any

5
6 and all other applicable legal principles, for the torts and Constitutional violations of the

7 listed

8
9 deputies and or other defendants who were and are employed by him or contracted for

10 work by

11
12 him or work under his authority and/or supervision, whether direct or indirect.

13
14 6. Negligence by Pima County/ and Pima County Sheriff Clarence Dupnik caused or
15 contributed to the tortious acts and constitutional violations by the listed deputies and
16 defendants.
17

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19 7. The injuries to the Plaintiff were proximately caused by the Defendants, as delineated

20 herein

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22 and to be supplemented as discovery proceeds.
23
24

25 **FACTUAL ALLEGATIONS**
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- 1 1. On or about March 29, 2012 (per TPD incident # 1203290679), at about
2 6:15 PM, Plaintiff Michael McHugh was contacted by and taken into
3 custody by the listed Tucson Police Department officers/defendants,
4 who operate under the auspices and authority of the City of Tucson and
5 the Tucson Police Department ("TPD").
6
- 7 2. The TPD defendants took the Plaintiff to a police station believed to be
8 at 270 S. Stone Avenue in Tucson, where he was held and intermittently
9 interrogated until about 2:30 AM on March 30, 2013.
10
- 11 3. While being held, Mr. McHugh indicated thirst and asked for water
12 several times and this request was not accommodated by the officers.
13
- 14 4. On or about 3:00 a.m. on March 30, the TPD officer/defendants
15 transported Mr. McHugh to the Pima County Adult Detention Center
16 (hereinafter "the jail" or "PCADC") and rendered him into the custody
17 and control of Pima Sheriff Clarence Dupnik and his agents, including
18 the listed defendant deputies, corrections officers and staffers.
19
- 20 5. While in the PCADC "booking area" from approximately 3:00 a.m. to 4
21 a.m. on March 30, 2012, Mr. McHugh displayed signs of medical
22 distress that would have been obvious to a reasonable person; including
23 but not limited to the facts that he was grimacing, hunching over in
24 visible anguish, flushed and sweating, and later pale and unable to
25 sweat; visibly weak, and he also vomited and/or retched and/or appeared
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27
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1 to be experiencing symptoms of vomiting/"dry-heaving," thus
2 exhibiting signs of dehydration or other medical distress. He also
3 verbally indicated his pain, discomfort, distress and alarm.
4

5
6 6. The Plaintiff was brought to "Medical," where he informed the
7 defendants of extreme thirst, nausea, lower back pain, and respiratory
8 distress; dry-heaving; dizziness and light-headedness; the treatment
9 provided by the listed defendants including Lemke consisted of giving
10 him a plastic to throw up into.
11

12
13 7. The Plaintiff was then returned to the booking area without further
14 treatment and without water being provided at "Medical."
15

16
17 8. At about 6:30 a.m., Mr. McHugh was brought to a holding cell with a
18 water fountain, whereupon he drank from it repeatedly and was also
19 visibly heaving and retching. He also spoke with an as yet unidentified
20 staff member who may have been a nurse, to whom he reiterated his
21 symptoms.
22

23
24 9. At about 10 a.m., Mr. McHugh was taken to a cell with no access to
25 water, and began to display extreme distress, and apparently confused
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27
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1 and/or delusional behavior that would reasonably be associated with
2 serious dehydration, and/or extreme pain or stress.

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5 10. Experiencing extreme discomfort and signs of physical danger to his
6 health and welfare, the Plaintiff was yelling, banging on the door and
7 window, and otherwise desperately seeking help from the defendants,
8 and help was not provided.

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11 11. At about 11:30 am, Defendant Street entered the cell with two or more
12 corrections officers whose identities are as yet unknown (but who will
13 be added to the defendant list to replace "John Does" if they are not
14 already present in the caption.)

15
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17 12. Sgt. Street verbally abused Mr. McHugh and shoved him up against the
18 wall of the cell, causing pain, fear and injury.

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21 13. At about 12:25 a.m. on March 30, after unnecessary delay, the Plaintiff
22 was released from the jail.

23
24 14. On March 31, 2012, Mr. Mchugh was admitted into UMC Hospital in
25 Tucson, where he was treated for liver and kidney damage and other
26 medical impairments resulting from extreme dehydration.
27
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1
2 15. The Plaintiff was released from the hospital on or about April 5, 2012.

3
4 16. During the course of his confinement at PCADC, the Plaintiff
5 experienced extreme discomfort, pain, fear, anguish, humiliation and
6 distress.
7

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9 17. The above-listed physical affects continued throughout his stay at the
10 hospital although the extreme fear was somewhat mitigated once he was
11 in medical hands, and the other symptoms gradually reduced during his
12 hospital stay.
13

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15 18. The Plaintiff continues through present to suffer physical, mental, and
16 emotional discomfort and distress due to the actions and inactions of the
17 Defendants, as described herein and to be supplemented as discover
18 proceeds.
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22 19. On or about September 26, 2012, which is 180 days or more before
23 March 30, 2013, the Plaintiff timely served upon the necessary listed
24 defendants a Notice of Claim pursuant to A.R.S. § 12-821.01.
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LEGAL THEORIES/COUNTS/CLAIMS

20. The following is based upon and incorporates by reference the foregoing factual allegations, etc.

21. Sheriff Dupnik, Pima County and the other listed officer defendants are responsible for and owe a duty of care to the people including inmates and arrestees who are in their custody and control at the jail/PCADC and elsewhere, and are responsible for the welfare of the inmates; this duty to be consistent with the standard of care for the relevant community.

22. The staff at the jail, whether medical contractors or employees, owe a duty of care to include providing proper medical treatment, whether directly or indirectly, per existing standards in the relevant community for any inmates submitted to their examination, care, control, or custody.

23. Defendant Clarence Dupnik had a duty to properly train and supervise the deputies, and that the foregoing wrongful actions of the listed Defendants resulted from negligent training and/or negligent supervision by defendant Clarence Dupnik and Pima County.

24. Alternately or additionally, the actions of the PCSD-employed and contracted defendants were undertaken pursuant to Clarence Dupnik's policies and procedures.

1 25. Clarence Dupnik is negligent in that he knew or should have known of
2 the potential or likelihood of negligence and/or misconduct by the listed
3 defendants under his employ and control.
4

5 26. Clarence Dupnik is responsible via *respondeat superior*, derivative
6 liability, and all applicable legal principles, for the torts and
7 Constitutional violations of the listed deputies.
8

9 27. Defendant Dupnik is directly responsible and responsible *respondeat*
10 *superior*, derivative liability, and all applicable legal principles, for the
11 Pima County Adult Detention Center, and the medical care or lack
12 thereof with regard to the Plaintiff.
13

14 28. Clarence Dupnik is responsible for the inadequate medical treatment and
15 overall lack of care during the Plaintiff's incarceration.
16

17 29. The Plaintiff's injuries have been caused, aggravated or increased as a
18 direct and/or proximate result of negligence by Clarence Dupnik.

19 30. The duties listed herein were breached when Mr. McHugh did not
20 receive proper medical attention and overall care for the above-listed
21 injuries/problems, while in the custody of the Pima County Sheriff's
22 Department and did not receive timely or adequate water nor sufficient
23 access to water.

24 31. This lack of attention to his obvious medical, physical and mental
25 distress caused severe pain, discomfort, physical and psychological
26 damage to Mr. McHugh.

27 32. Specifically, the listed Defendants, including officers, jail staff and/or
28 contractors working at PCADC not only failed to allow Mr. McHugh
access to hydration and medical care, but they also confined/detained

1 him such that he himself could not access water and medical care or
2 seek proper assistance or treatment of any kind.

3 33. The above duties were further breached, and an intentional tort was
4 committed, when Defendant Street and two or more accomplice CO's
5 assaulted Mr. McHugh in a holding cell at the jail, by pushing him into
6 or towards a wall as he expressed his symptoms and distress, which
7 increased his suffering, and which comprised malicious behavior
committed with an evil mind.

8 34. Mr. McHugh was at UMC for 5 days being treated for the injuries
9 suffered while in TPD and jail/sheriff's custody and control, and was
10 discharged from UMC on April 5, 2012.

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13 35. The Defendant/s were guilty of one or more of the following tortious
14 acts and/or omissions, as well as acts or omissions to be ascertained
15 through relevant discovery, which were the proximate cause of injuries
16 to the Plaintiff, on or about March 30, 2012:
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20 36. The foregoing actions and inactions of the Defendants constitute a breach
21 of a duty of care and/or intentional wrongdoing or reckless disregard, and are the cause of
22 Plaintiff's injuries and damages, comprising the following tortious counts:
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24 I. Negligence (failure to provide proper medical care; deprivation of
25 necessities for reasonable welfare);
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27 II. Assault;
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1 III. Battery;

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3 IV. Cruel and unusual punishment per confinement conditions;

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5 V. Intentional infliction of emotional distress;

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7 VI. Negligent infliction of emotional distress;

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9 VIII. Malpractice;

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11 VIII. Deliberate indifference

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13 X. False Imprisonment

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15 XI. Any and all other torts as suggested by the facts herein or through
16 further discovery process and research.

17 **CONCLUSION**

18
19 Whereupon the Plaintiff prays for judgment against the Defendants, each and
20 every, as follows:

21
22 1. A judgment in favor of the Defendant;

23
24 2. For compensatory damages in such an amount as will reasonably and
25 adequately compensate Plaintiff for his injuries, pain and suffering, past medical
26 expenses, future medical expenses, loss of enjoyment of life and such other expenses and
27 damages as the Court deems appropriate.
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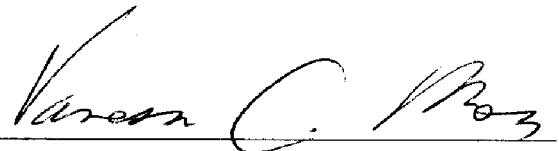
1 4. For an award of punitive and/or exemplary damages against the defendants.

2
3 5. For costs of this suit legally and necessarily incurred in the pursuit of this
4 action. including expert fees under 42 U.S.C.A. § 1988.

5
6 6. For attorney's fees as applicable, and especially as pursuant to A.R.S. section 12-
7 341.01(c) and 12-349 should this suit be defended without substantial justification.

8
9 7. For any and all relief whether as listed above or further relief as this Court
10 deems just and proper under the circumstances, in an amount no less than \$750,000.

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14 RESPECTFULLY SUBMITTED this 28th day of MAR, 2013,

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19 Vanessa C. Moss
20 Attorney for Plaintiff Michael McHugh

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23 Filed this 28th day of MAR, 2013,
24 Pima County Superior Court

25 Served by US Mail to:

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27 Pima County Attorney,
28 Civil Division
32 N. Stone Ave

Tucson, AZ 85701

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 State Bar No. 021560 P.C.C. No. 65851

12 MAR 28 PM 7:10

FILED
 SUPERIOR COURT
 BY 

LAURA TENENHOLTZ

IN THE SUPERIOR COURT FOR THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

MICHAEL MCHUGH, a single man,

Plaintiff,

vs.

PIMA COUNTY, ARIZONA; PIMA
 COUNTY SHERIFF'S DEPARTMENT;
 SHERIFF CLARENCE DUPNIK; MARSHA
 FOWLER, RN; ANDREA BERRIOS, MA;
 KATHY RICHEY, RN; GWEN LEMKE, MA;
 RAMON TAPIA, MA; ROMONA YUBETA,
 RN; JOHN REAM, RN; ELLINOR
 PROCTOR, RN; KEVIN CONDON, RN;
 CATHY KOHLER, RN; ELISA L.
 NAVARRO PCSD#5594; ALONZO VILLA
 JR. PCSD #5766; ROBERT K. CHATFIELD
 PCSD #6250; JARROD W. NIELSON PCSD
 #4678; FRANCISCO B. VASQUEZ
 PCSD#3395; MICHELLE L. MITCHELL
 PCSD#7124; ARMANDO ENCINAS PCSD
 #4498; STEVEN R. STREET PCSD#2293;
 GUADALUPE V. BORBOA PCSD #4565;
 SHARON ESPINOZA PCSD#6437 ;GERALD
 D. AUSTIN PCSD #6512; IAN R.
 BURRUATO PCSD #7105; TODD T.
 MATTAS PCSD #3523; ROBERT L.
 PHILLIPS PCSD#3766; CARY W. TEAL
 PCSD #7133; CITY OF TUCSON; TUCSON
 POLICE DEPARTMENT; TPD CHIEF
 ROBERTO VILLASENOR; OFC. ELKINS
 TPD#52777; OFC. KACZINSKI TPD#32266;
 OFC. HUMPHRIES TPD#40358; OFC. KIDD

C20131683

Case No. _____

**CERTIFICATE OF COMPULSORY
 ARBITRATION**

Assigned to the Honorable **Charles Harrington**

TPD#52933; OFC. GALVAN TPD# 43045;
OFC. DICKINSON TPD#42393; OFC.
HEARN TPD#50454; OFC. OLIVES
TPD#45662; OFC. ATCHINSON TPD#
35638; OFC. HAYNES TPD#41537;
OFC.VAN NORMAN TPD# 31575;JOYCE
PRITCHARD;RANDIE VIETTI; ALL
SPOUSES THEREOF; CONMED
HEALTHCARE MANAGEMENT, AND
OWNER AND OPERATOR THEREOF;
JOHN & JANE DOES, 1-50,
Defendants.

Plaintiff, Michael McHugh, through counsel as undersigned, hereby certifies that the largest award sought by Plaintiff, including punitive damages and excluding attorneys' fees and costs:

X does exceed the limit set by Local Rules for compulsory arbitration. This case is not subject to the Uniform Rules for Arbitration.

— does not exceed the limit set by Local Rules for compulsory arbitration. This case is subject to the Uniform Rules of Procedure for Arbitration.

DATED this 28th day of MAR, 2013,



Vanessa C. Moss
Attorney for Plaintiff

1
2
3 ORIGINAL of the foregoing filed
this 28 day of MAR, 2013, with:

4 Clerk of the Court
5 PIMA COUNTY SUPERIOR COURT
6 110 West Congress
Tucson, Arizona 85701



Case 4:13-cv-00590-JGZ Document 1-2 Filed 07/05/13 Page 19 of 19
Pima County Clerk of Superior Court
Tucson, Arizona



Received for:	MICHAEL MCHUGH	Receipt Number:	1853803
Received from:	VANESSA C MOSS ATTORNEY AT LAW	Date:	3/28/2013
Amount Received:	\$244.00	Case Number:	C20131683
		Clerk Number:	2.016

Caption: MICHAEL MCHUGH VS. PIMA COUNTY, ARIZONA ET AL.

Cash: \$0.00 Check: \$244.00 Charge: \$0.00 ACH: \$0.00

Begin Financial Docket



Civil Complaint

\$244.00 PAID

End Financial Docket

Change Returned: \$0.00

Amount Refunded: \$0.00